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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

BRADLEY C. SMITH, derivatively on behalf of) Civil Action No. C 09-4775 PJH
FRANKLIN CUSTODIAN FUNDS,)
Plaintiff,)
vs.)
FRANKLIN/TEMPLETON DISTRIBUTORS,)
INC., HARRIS J. ASHTON, ROBERT F.)
CARLSON, SAM GINN, EDITH E. HOLIDAY,)
FRANK W.T. LAHAYE, FRANK A. OLSON,)
LARRY D. THOMPSON, JOHN B. WILSON,)
CHARLES B. JOHNSON, AND RUPERT H.)
JOHNSON,)
Defendants,)
and)
FRANKLIN CUSTODIAN FUNDS,)
Nominal Defendant.)
PLAINTIFF'S NOTICE OF APPEAL
AND NINTH CIRCUIT RULE 3-2
REPRESENTATION STATEMENT
(FRAP 12(b))

Notice is hereby given that plaintiff Bradley C. Smith, derivatively on behalf of Franklin Custodian Funds, in the above-captioned action, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Judgment [Dkt. No. 55] entered in this action on October 22, 2010, and the Orders entered in this action on June 8, 2010 [Dkt. No. 44] and October 22, 2010 [Dkt. No. 54].

Dated: November 18, 2010

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NINTH CIRCUIT RULE 3-2 REPRESENTATION STATEMENT

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31 Dated: November 18, 2010

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CERTIFICATE OF SERVICE

I, Jeffrey Baum, hereby certify that a true copy of the above document was served upon the attorney of record for each party via e-mail on November 18, 2010.



Jeffrey Baum